

Animal Care and Protection (Code of Practice for Horses at Livestock Slaughter Facilities) Amendment Regulation 2023

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities provide this human rights certificate with respect to the Animal Care and Protection (Code of Practice for Horses at Livestock Slaughter Facilities) Amendment Regulation 2023 (the Amendment Regulation) made under the *Animal Care and Protection Act 2001* (the Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation inserts a new Code of Practice for Horses at Livestock Slaughter Facilities (Code of Practice) as a new Schedule 8A of the *Animal Care and Protection Regulation 2023*. The Code of Practice prescribes minimum standards for animal welfare in relation to horses slaughtered at abattoirs and knackeries (livestock slaughter facilities). Responsibilities are prescribed for owners of livestock slaughter facilities which process horses, including appointing an animal welfare officer to be responsible for the welfare of the horses at the facility. Responsibilities are also prescribed for the owner to ensure the facility is designed, constructed, maintained and equipped to minimise welfare risks to horses, and to ensure that staff are suitably competent and aware of their responsibilities in relation to the Code of Practice. The owner is also responsible for the establishment of a management system and the keeping of records on certain matters relevant to the welfare of horses. The Code of Practice prescribes responsibilities for people working at livestock slaughter facilities which process horses, including requirements about providing feed and water, handling horses, assessing and monitoring and carrying out both routine slaughter and emergency killing.

The authorising Act for the Amendment Regulation is the Act, which is the primary animal welfare legislation for Queensland. The Act sets the minimum standards for the welfare of animals, the maximum penalties for offences, and provides powers to inspectors to act when people's actions fall below the minimum standards. The Act applies to all vertebrate animals including amphibians, fish, mammals, reptiles, and invertebrate animals, including cephalopods. It does not apply to humans or some developmental stages of certain animals.

The Act provides for regulations about codes of practice for animal welfare (section 4(a) of the Act) and allows regulations to require compliance with codes of practice (section 4(b) of the Act).

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation engages property rights under section 24 of the *Human Rights Act 2019* (HR Act).

Section 9 (Handling of horses)

Section 10 (Management of horses)

Section 11 (Severely distressed, sick, weak or injured horses)

Section 12 (Emergency killing of horses)

Section 13 (Humane slaughtering of horses)

Section 16 (Exsanguination of horses)

The Amendment Regulation also engages privacy rights under section 25(a) of the HR Act (i.e. the right not to have a person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with).

Section 2 (Owner's responsibilities)

Section 4 (Animal welfare officer's responsibilities)

Section 20 (Compliance assessment and record keeping)

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Property rights

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable, or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is potentially engaged by requirements for horse handling, humane slaughter as a routine operation, and emergency killing of horses which are sick, injured, weak or severely distressed. This is due to animals being considered as property, so legislating the circumstances and way in which they must be killed places a restriction on the horse owner's use of their property. Note that depending on commercial arrangements the horse owner, and therefore the person whose property rights are limited, could be the livestock slaughter facility owner or the consignor of the horses.

The HR Act protects the rights of individuals, not corporations, so the limitation on property rights will only apply in circumstances where a horse is owned by an individual at the time the relevant limitation applies.

Privacy rights

The right to privacy in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate. The scope of the right is broad, and the underlying value of the right is the importance of protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.

The concept of 'privacy' is not defined in the HR Act. It has been interpreted to encompass information privacy, including personal information and health records and correspondence, and extends to an individual's private life, including a person's identity and physical and mental integrity. Privacy can also include an individual's geographical or spatial privacy and property.

The right to privacy is engaged by the requirement that an Animal Welfare Officer at a horse slaughter facility must report non-compliances with the Code of Practice to the owner and, where the non-compliance adversely affects the welfare of a horse, the owner of a livestock slaughter facility which slaughters horses, must report the non-compliance to the department (that is, the department responsible for enforcing the Code of Practice, currently the Department of Agriculture and Fisheries).

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In 2020, the *Inquiry into Animal Cruelty in the Management of Retired Thoroughbred and Standardbred Horses in Queensland* (the Martin Inquiry) found that poor design of slaughter establishments, inappropriate handling of horses such as using loud noises to move horses, allowing horses to see and hear other horses being stunned or shot and smell blood immediately before slaughter, are all factors that lead to poor welfare outcomes for horses and are not prevented under current legislation (finding 10b). The Martin Inquiry was commissioned in response to community outrage about the treatment of horses at a Queensland abattoir and knackery highlighted in the media.

The Martin Inquiry therefore recommended that the Department of Agriculture and Fisheries, under the guidance of an expert panel to urgently develop a compulsory Queensland Code of Practice for Horses Processed at Slaughter Establishments to ensure best practice for the humane treatment of horses from arrival to their death (Finding 10.2.1).

The purpose of the Code of Practice, including the limitation of property rights and privacy rights identified above, is therefore to address the Martin Inquiry's findings, and ensure the welfare and humane treatment of horses and other equids being processed at livestock slaughter facilities (including knackeries) in Queensland. A further purpose is to meet community expectations in relation to an appropriate government response to the issues highlighted in the media and the subsequent Martin Inquiry. These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights and privacy rights represents a timely, targeted and effective way to achieve the purpose. The requirements in the Code of Practice were developed under the guidance of an Expert Panel comprised of representatives from the Australian Veterinary Association, the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated, and Meramist Pty Ltd (owner of the only major horse abattoir currently operating in Australia). The requirements of the Code of Practice were also informed by specific recommendations of the Martin Inquiry, which considered submissions from racing bodies, animal welfare groups and the general community. The submissions concurred that the good welfare outcomes for horses and other equids being transported and processed at abattoirs and knackeries need to be ensured, and that there needs to be changes to the current arrangements to ensure that horse slaughter is humane. It was further identified that the regulatory environment has gaps and inadequate horse welfare specific requirements. The Code of Practice, and the limitations on property rights therein, address those identified gaps.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Other ways of achieving the purpose were considered, including maintaining the status quo and engagement with horse slaughter establishments to encourage voluntary improvements.

Maintaining the status quo completely avoids the restriction on property rights and privacy rights, but the findings of the Martin Inquiry indicated that the status quo is failing to prevent poor welfare outcomes for horses. The Martin Inquiry found that the Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments was voluntary and outdated, but most importantly, it failed to provide for appropriate establishment design to achieve humane slaughter of horses. The inquiry further identified that the poor design of slaughter establishments, inappropriate handling of horses such as using loud noises to move horses, allowing horses to see and hear other horses being stunned or shot and smell blood immediately before slaughter, are all factors that lead to poor welfare outcomes for horses and are not prevented under current legislation. In addition, the Martin Inquiry identified a need for livestock slaughter facility management to properly monitor animal welfare and take appropriate corrective action.

Engagement with horse slaughter establishments to encourage voluntary improvements also avoids the restriction on property rights and privacy rights. It is considered that engagement with horse slaughter establishments may bring about minor improvements at the Meramist abattoir, who have shown willingness to make improvements where there is no significant cost. However, the current good engagement with Meramist management is not guaranteed into the future, This option is also not likely to lead to improvements at the Rathdowney knackery as that operator was less willing to engage. There is also the possibility of new entrants into the industry in future, whose willingness to engage and voluntarily provide adequate standards of welfare for horses is unknown.

It has therefore been concluded that in order to bring about the more significant changes to ensure better horse welfare at livestock slaughter establishments, mandatory requirements (and the resulting restriction on property rights) are necessary to achieve the purpose.

Safeguards to ameliorate the impact of the limitation on property rights include that the requirements have been tailored under the guidance of an expert panel to ensure that priority risks are addressed, and that unnecessary requirements that will not achieve better welfare outcomes are avoided.

Safeguards also already exist in the *Animal Care and Protection Act 2001* to ensure that only appropriately qualified persons are able to exercise powers and make decisions to enforce the Code of Practice. Those powers are limited to minimise impacts on human rights. The Act provides for access to a fair hearing in that the offence of breaching a compulsory code requirement must be prosecuted to obtain a penalty, and administrative decisions such as the giving of an animal welfare direction to comply with a compulsory code requirement are internally and externally reviewable.

Safeguards for privacy rights are also in place through the *Information Privacy Act 2009*, and provisions about confidential information in the *Animal Care and Protection Act 2001*, to protect personal information about individuals provided to the department in a report about a non-compliance with the Code of Practice.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Code of Practice represents an appropriate balance between the purpose of the limitation and the importance of preserving property and privacy rights. The limitations on property rights have been carefully designed by an expert panel to target the risks to animal welfare in the handling and killing of horses. The limitation on privacy rights through the reporting of details of a non-compliance will only arise where an individual's act or omission has led to a non-compliance with the Code of Practice that adversely affects a horse's welfare, that is, there is no routine reporting required to the department.

The safeguards outlined in section (d) mitigate the impact of the Code of Practice on human rights by containing the limitations on property and privacy rights only to the extent necessary to achieve better welfare for horses at livestock slaughter establishments in Queensland.

Conclusion

I consider that the Animal Care and Protection (Code of Practice for Horses at Livestock Slaughter Facilities) Amendment Regulation 2023 is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND
FISHERIES AND MINISTER FOR RURAL COMMUNITIES

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